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7 Attorneys for Defendant  
8 VARIAN MEDICAL SYSTEMS, INC.

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION  
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13 UNIVERSITY OF PITTSBURGH OF THE  
COMMONWEALTH SYSTEM OF HIGHER  
14 EDUCATION d/b/a UNIVERSITY OF  
PITTSBURGH, a Pennsylvania non-profit  
15 corporation (educational),

16 Plaintiff,

17 v.

18 VARIAN MEDICAL SYSTEMS, INC., a  
19 Delaware corporation,

20 Defendant.  
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Case No. CV 08-02973 MMC

**[PROPOSED] ORDER GRANTING  
VARIAN'S MOTION TO DISMISS  
PLAINTIFF'S CLAIMS PURSUANT  
TO FED. R. CIV. P. 12(B)(6) BASED  
ON DOCTRINE OF RES JUDICATA**

1 Having considered Defendant Varian Medical Systems, Inc.'s Motion to Dismiss and  
2 supporting papers, together with any opposition or reply papers on file, the pleadings and papers  
3 on file, and arguments of counsel:

4 **IT IS HEREBY ORDERED THAT:**

5 Varian Medical Systems, Inc.'s Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6) is  
6 hereby **GRANTED**. Plaintiff's Complaint is barred by the doctrine of res judicata because the  
7 parties and claims are the same as in a prior action in the United States District Court for the  
8 Western District of Pennsylvania, Civil Action No. 2:07-cv-00491-AJS, which resulted in a final  
9 judgment on the merits in Varian's favor entered on June 16, 2008. *See, e.g., Lubrizol Corp. v.*  
10 *Exxon Corp.*, 929 F.2d 960 (3d Cir. 1991); *Scott v. Kuhlmann*, 746 F.2d 1377 (9th Cir. 1984).

11 **IT IS SO ORDERED.**

12 Dated: \_\_\_\_\_, 2008

13  
14 By: \_\_\_\_\_  
15 UNITED STATES DISTRICT JUDGE  
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